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In the Supreme Court of the United States

OCTOBER TERM, 1929

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE UNITED STATES FOR THE LOS ANGELES DISTRICT, No. 31, PETITIONER

v.

MATEO ZAJA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. ——.

WALTER E. CARR, DIRECTOR OF IMMIGRATION OF THE United States for the Los Angeles District, No. 31, petitioner

v.

MATEO ZAJA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of Walter E. Carr, Director of Immigration, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled case on February 17, 1930.

QUESTION PRESENTED

Whether an alien who arrived in this country in 1925 as a seaman and deserted his ship, and who remained here for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Department of Labor thereunder, may be deported at any time under that Act or only within

three years after entry in accordance with the Immigration Act of 1917.

STATEMENT

The respondent, Mateo Zaja, is an alien, a citizen of Jugo-Slavia, and is of the Dalmatian race. He signed on the Italian steamship "Livenza" at Hamburg, Germany, about November, 1924, as a seaman. The vessel arrived at San Pedro, California, on or about January 21, 1925, and on the same day respondent deserted therefrom. (R. 13). Respondent was taken into custody on a warrant of arrest issued October 5, 1928, by the Secretary of Labor, charging that respondent "has been found in the United States, in violation of the Immigration Act of May 26, 1924, for the following among other reasons: That he has remained in the United States for a longer time than permitted under said act or regulations made thereunder." (R. 14.) At a hearing before the immigration inspector, at which the respondent was represented by counsel, he testified that he had never left the United States since his entry in 1925, and had been employed as a laborer on shore, and on fishing vessels operating in and out of San Pedro, always in local waters. (Immigration File, made an original exhibit below, R. 24.)

Subsequently, the Assistant to the Secretary of Labor issued a warrant of deportation on the ground contained in the warrant of arrest, permitting the respondent to depart voluntarily or ship

one way to any country of his choice, except to foreign contiguous territory. (R. 15.)

Thereupon respondent sued out a writ of *habeas corpus* in the District Court for the Southern District of California. The writ was sustained without opinion. (R. 19.) On appeal, the Circuit Court of Appeals affirmed the order of the District Court, holding that the facts as to the application of the three-year statute of limitation did not differ from the case of *Nagle* v. *Hansen*, 17 F. (2d) 557, decided by the same court. (R. 31, 37 F. (2d) 1016.)

SPECIFICATION OF ERRORS TO BE URGED

The errors which the petitioner urges as ground for the granting of the writ of certiorari and for reversal of the judgment of the Circuit Court of Appeals for the Ninth Circuit are:

1. The court erred in affirming the order of the trial court.

2. The court erred in holding that the three-year statute of limitation as provided in Section 34 of the Immigration Act of 1917 prevented the deportation of respondent.

3. The court erred in holding that respondent could not be deported as provided by Section 14 of the Immigration Act of 1924, without regard to the time of his entry.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case is in con-

flict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Piccolella* v. *Commissioner of Immigration*, 36 F. (2d) 1022 (No. 562, certiorari denied March 3, 1930), and *Demetrius Philippides* v. *Day*, 37 F. (2d) 1015 (No. 847, in which petition for certiorari was filed April 25, 1930, and which the respondent is not opposing), and the unreported decision of the Circuit Court of Appeals for the Sixth Circuit, rendered March 14, 1930, in *Zurbrick* v. *Traicoff*.

2. The question involved in this case is one of Federal law, which has not been, but should be, settled by this Court. In the administration of the immigration laws the Secretary of Labor is constantly confronted with the problem of deserting seamen. Since the Immigration Act of 1924, many inadmissible aliens have entered the United States as seamen with the purpose of circumventing the present restrictive immigration laws.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit should be granted.

THOMAS D. THACHER,
Solicitor General.

MAY, 1930.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The District Court sustained the writ of habeas corpus without opinion. (R. 19.) The opinion of the Circuit Court of Appeals (R. 31) is reported in 37 F. (2d) 1016.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Ninth Circuit was entered on February 17, 1930. (R. 32.)

The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are set forth in the Appendix hereto at pp. 10–15.

ARGUMENT

The question presented is whether an alien who arrived in this country in 1925 as a seaman and deserted his ship, and who remained here for a longer time than permitted by the Immigration Act of 1924 and the regulations of the Department of Labor thereunder, may be deported only within three years after entry in accordance with Section 34 of the Immigration Act of 1917.

The Circuit Court of Appeals held that "in the facts material to the application of the statute of limitations the case does not differ from *Nagle* v. *Hansen,* decided by this court in February, 1927, 17 F. (2d) 557." (R. 31.) In the *Hansen case, supra,* the alien entered this country as a seaman on July 5, 1921, and was arrested more than three years thereafter and charged with being unlawfully in this country in that he entered without being admitted under the quota allowed to Norway for the fiscal year ending June 30, 1922. The Circuit Court of Appeals held that Section 34 of the Immigration Act of 1917 created "a special limitation, in favor of seamen as a class, which is not repealed by the 1924 Act," and, since the three-year limitation had expired, deportation could not be had.

It is to be noted, however, that in the *Hansen case* the alien was not charged with remaining longer than permitted by the 1924 Act, but with entering in violation of the Quota Act of 1921. The entry was before and not subsequent to the 1924 Act. The conclusion of the court in the *Hansen case* on the facts there presented is in accord with the judgment of the Circuit Court of Appeals for the Second Circuit in *United States ex rel. Danikas* v. *Day,* 20 F. (2d) 733, in which Section 34 of the Immigration Act of 1917 was held to govern the case of an alien seaman, who entered this country prior to the Immigration Act of 1924 and remained for a period of more than three years.

In *Piccolella* v. *Commissioner of Immigration,* 36 F. (2d) 1022, the alien entered this country in June, 1925, as a seaman, and deserted. He was arrested more than three years thereafter, and ordered deported on the ground that he was found in the United States in violation of the Immigration Act of 1924, in that he had remained here for a longer time than permitted by that Act and the regulations of the Department of Labor thereunder. The Circuit Court of Appeals for the Second Circuit affirmed the order dismissing the writ upon the authority of its decision in *Rios* v. *Day,* 24 F. (2d) 654; certiorari denied 277 U. S. 604.

In the *Rios case, supra,* the alien entered as a seaman in September, 1925, and abandoned his calling. He was arrested by the immigration authorities within three years after entry, and ordered deported for remaining here longer than permitted by the Immigration Act of 1924 and the regulations made thereunder. Although the special limitation of three years under Section 34 of the Immigration Act of 1917 was not involved, other provisions of that section requiring an examination of the seaman's qualification for admission and a finding of some ground for deportation other than his unlawful entry were asserted in support of the writ. These provisions were held inapplicable because of his entry pursuant to Section 19 of the 1924 Act. Thus the court held Section 34 of the 1917 Act inapplicable to seamen

temporarily admitted under the 1924 Act. The effect of the court's ruling in the *Rios case* was misapprehended by the court below because the three-year limitation was not involved. (37 F. (2d) 1016.)

In *Philippides* v. *Day*, 37 F. (2d) 1015, the alien entered this country in September, 1925, and deserted his ship. He was arrested more than three years thereafter, and charged with remaining here for a longer time than permitted by the Immigration Act of 1924 and the regulations prescribed thereunder, and after hearing ordered deported on that charge. The Circuit Court of Appeals for the Second Circuit affirmed the order dismissing the writ on the authority of the *Piccolella case, supra*. Petition for certiorari was filed in this Court on April 25, 1930 (No. 847), and the respondent has acquiesced in the issuance of the writ because of the conflict of decision with the instant case.

In *Zurbrick* v. *Traicoff*, decided March 14, 1930, 37 F. (2d) 517, unreported, the Circuit Court of Apeals for the Sixth Circuit held that an alien seaman who entered this country in October, 1924, and deserted, and who was arrested more than three years thereafter, could be deported under Section 14 of the Immigration Act of 1924, in that he remained in this country for a longer time than permitted under that Act and regulations prescribed thereunder. The court cited the *Rios case, supra*.

In *Cellamare v. Day*, 32 F. (2d) 623, and *Ex parte Sturm*, 38 F. (2d) 272, the District Court for the Southern District of New York held that alien seamen, who entered under the 1924 Act, deserted and were taken into custody more than three years thereafter, may be deported under Section 14 of the Immigration Act of 1924 and regulations prescribed thereunder.

CONCLUSION

It is submitted that the petition for a writ of certiorari should be granted because of the conflict of decision between the Circuit Court of Appeals for the Ninth Circuit and the Circuit Courts of Appeals for the Second and Sixth Circuits. The question presented is an important one in the administration of the immigration laws.

THOMAS D. THACHER,
Solicitor General.

O. R. LUHRING,
Assistant Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

FRANK M. PARRISH,
Attorney.

MAY, 1930.

APPENDIX

STATUTES INVOLVED

Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 161–164, 168:

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, * * *. [U. S. C. Title 8, Sec. 203.]

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws. [U. S. C. Title 8, Sec. 213.]

SEC. 14. Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States, or to have

remained therein for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 19 and 20 of the Immigration Act of 1917: * * *. [U. S. C. Title 8, Sec. 214.]

SEC. 15. The admission to the United States of an alien excepted from the class of immigrants by clause (2), (3), (4), (5), or (6) of section 3, or declared to be a non-quota immigrant by subdivision (e) of section 4, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed * * * to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. [U. S. C. Title 8, Sec. 215.]

SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.

SEC. 28 (b) The term "alien" includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of

the United States not taxed, nor citizens of the islands under the jurisdiction of the United States. [U. S. C. Title 8, Sec. 224.]

* * * * *

Immigration Act of 1917, c. 29, 39 Stat. 874, 896:

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act.

Sections 19 and 20 of the Immigration Act of 1917, 39 Stat. 889–891 (U. S. C. Title 8, Secs. 155, 156), referred to in Section 14 of the Immigration Act of 1924, *supra,* make no provision for a board of special inquiry. Also, unlike Section 34 of the Immigration Act of 1917, Section 14 of the Immigration Act of 1924 does not require that before deportation can be had there must be an examination into the qualifications for admission of the offending seaman.

PERTINENT REGULATIONS

Paragraph 6 (c) of General Order No. 38, issued by the Department of Labor on September 10, 1924,

and in effect when the seaman involved in the instant case arrived in this country, provides:

> Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the United States for more than sixty days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of subdivision (5) of Section 3 of the Immigration Act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of Section 14 of said Act.

Rule 6, Subdivision I, paragraphs 1, 2, and 3 of the July 1, 1925, edition of the Immigration Rules of the Department of Labor, provides as follows:

> *Par. 1.*—Any alien who shall come to a United States port as a seaman and land in the United States otherwise than in pursuance of and in accordance with the provisions of the act of February 5, 1917, shall be arrested, as provided in section 34 of said act, whenever and wherever found in this country within three years from the date of landing. Such alien then shall be brought before a board of special inquiry and subjected to a thorough examination under all provisions of the immigration law

applicable to the case of an alien seeking admission; such investigation, if any, as may be necessary to develop evidence concerning him shall be conducted and he shall be subjected also to the medical examination required in the cases of alien applicants for admission: *Provided,* That his qualifications for admission to the United States shall be determined according to the immigration laws, rules, and regulations in force at the time of such examination. If such seaman is rejected by the board he shall be allowed an appeal to the department unless the rejection is upon a ground with respect to which the law prohibits an appeal; and in any event the record of the board of special inquiry shall be transmitted to the bureau for submission to the department, in order that a final decision may be rendered if upon appeal and that a warrant of deportation may be issued whether upon appeal or not. Upon the issuance of the warrant the alien shall be deported at the expense of the immigration appropriation.

Par. 2.—Where a bona fide alien seaman, serving as such on a vessel arriving at a port of the United States, and permitted to enter temporarily the United States as a nonimmigrant pursuant to subdivision (5) of section 3 of the immigration act of 1924 solely in pursuit of his calling as a seaman, engages in any other calling or occupation for hire or profit, or enters into the coastwise trade of the United States, or remains within the

United States for more than 60 days after such entry, he shall be deemed to have abandoned his status as a nonimmigrant within the meaning of said subdivision (5) of section 3 of the immigration act of 1924, and shall be taken into custody and deported at any time thereafter in accordance with the provisions of section 14 of said act.

Par. 3.—If the alien is charged in the warrant of arrest merely with entering contrary to the provisions of section 34 of the act of February 5, 1917, the conduct of the hearing shall be governed by subdivision B of rule 11. But if the warrant is based on some other charge, the conduct of the hearing shall be governed by subdivision D of rule 18.

The above rules were carried into the March 1, 1927, edition without change.

U. S. GOVERNMENT PRINTING OFFICE: 1930